

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

MT223, LLC
Plaintiff,

v.

DEPOSITORS INSURANCE COMPANY
Defendant.

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CIVIL ACTION NO. 7:21-cv-00044

NOTICE OF REMOVAL

Defendant Depositors Insurance Company (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *MT223, LLC v. Depositors Insurance Company*; Cause No. CV57376; In the 441st Judicial District Court of Midland County, Texas.

**I.
BACKGROUND**

Plaintiff MT223, LLC (hereinafter “Plaintiff”) initiated the present action by filing its Original Petition in Cause No. CV57376; In the 441st Judicial District of Midland County, Texas on February 3, 2021 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**.

1. Defendant appeared and answered on March 19, 2021, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

2. Pursuant to 28 USC § 1446(a) all a copy of all process, pleadings, and orders served upon Defendant in the State Court Action are incorporated in **Exhibit A**.

3. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through its attorneys of record, and to the clerk of the 441st Judicial District Court of Midland County, Texas.

4. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendant of Plaintiff's Original Petition and less than one year after the commencement of this action.

II. JURISDICTION

5. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441 because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of Parties

6. Plaintiff MT223 LLC is a Texas limited liability company and maintains its principal place of business in Texas. A diligent search of publicly available information on the members of MT223 LLC has been conducted and two individuals and twelve entities can be identified based on public records.¹ The two individuals identified are Michael T. Morgan and Wes Perry, who, at times, was also identified in public records as William W. Perry or W. Wes Perry. The twelve entities identified were (1) SES Investments, Ltd. and (2) SES Investments, Ltd. DB Plan; (3) Stark Family, Ltd.; (4) Logic, Inc.; (5) Mett Oil Gas; (6) Tiburon Oil Gas; (7) Finwing Corporate Retirement Trust; (8) HPL Holdings, LLC; (9) Petraitis Properties, Inc.; (10) Vanderpool Management, LP; (11) Kennedy Minerals, Ltd.; and (12) Voyage Energy, LLC.

¹ See *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of a limited liability company is determined by the citizenship of all of its members).

7. The Certificate of Formation of Limited Liability Company filed by MT223 LLC with the Texas Secretary of State on February 4, 2010 lists only Michael T. Morgan as a manager. Michael T. Morgan is an individual domiciled in Midland County, Texas and is thus a citizen of the state of Texas. The Texas Franchise Tax Public Information Report for the 2019 report year that was filed by MT223 LLC with the Texas Secretary of State lists Wes Perry as a manager, who signed the Report as William W. Perry, manager. Wes Perry is an individual domiciled in Midland County, Texas and is thus a citizen of the State of Texas. The 2019 Texas Franchise Tax Public Information Report also lists the above-referenced twelve entities in the Report's 'Section A' reserved for the 'Name, title and mailing address of each officer, director, member, general partner or manager,' but the role of each entity is not specified in the Report.

i. SES Investments Ltd and SES Investments Ltd DB Plan

8. SES Investments, Ltd is a Texas limited partnership and maintains its principal place of business in Texas. The citizenship of a limited partnership is based upon the citizenship of each of its underlying members.² A diligent search of publicly available information on the partners of SES Investments Ltd has been conducted, and based upon the publicly available information, the sole general partner is SES Operating LLC.³ No other partners of SES Investments Ltd were discovered through a diligent search and review of publicly available records. SES Operating LLC is a Texas limited liability company that has its principal place of business in Texas. A diligent search of publicly available information on the members of SES Operating LLC has been conducted, and based upon the publicly available information, W. Wes

² *Id.*

³ The Amended and Restated Certificate of Limited Partnership filed by SES Investments Ltd with the Texas Secretary of State on October 12, 2001 lists only SES Operating LLC as the sole general partner.

Perry is the sole member of SES Operating LLC.⁴ W. Wes Perry is an individual domiciled in Midland County, Texas and is thus a citizen of the State of Texas. No other members of SES Operating LLC were discovered through a diligent search and review of publicly available records. Therefore, based on information and belief after diligent inquiry, SES Operating LLC is a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, SES Investments Ltd is a citizen of the State of Texas.

9. SES Investments Ltd DB Plan was listed separately from SES Investments Ltd on the Texas Franchise Tax Public Information Report for the 2019 report year that was filed by MT223 LLC with the Texas Secretary of State. A diligent search of publicly available information of SES Investments Ltd DB Plan has been conducted. A search on the publicly available Texas Secretary of State online Business Organization Inquiry – View Entity tool identified no entities under this name. The mailing address for SES Investments Ltd DB Plan provided on MT223 LLC’s 2019 Texas Franchise Tax Public Information Report is the same address as MT223 LLC’s principal place of business in Midland, Texas. Upon opinion and belief, SES Investments Ltd DB Plan is a subset ‘direct benefits plan’ of SES Investments Ltd, and thus, would more likely than not share the same citizenship as SES Investments Ltd. No other information on the partners or members of SES Investments Ltd DB Plan was discovered through a diligent search and review of publicly available records and Depositors has no reason to believe that any members share the citizenship of Depositors. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, SES Investments Ltd DB Plan is a citizen of the State of Texas.

⁴ The Articles of Organization filed by SES Operating LLC with the Texas Secretary of State on October 8, 2001 lists only W. Wesley Perry as the sole member.

ii. Starck Family Ltd

10. Starck Family Ltd is a Texas limited partnership with its principal place of business in Texas. A diligent search of publicly available information on the partners of Starck Family Ltd has been conducted, and based upon the publicly available information, the sole general partner is Finwing Corporation.⁵ No other partners of Starck Family Ltd were discovered through a diligent search and review of publicly available records. Finwing Corporation is a domestic corporation organized under the laws of the State of Texas with its principal place of business in Texas.⁶ Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Finwing Corporation is a citizen of the State of Texas, and thus, Starck Family Ltd is a citizen of the State of Texas.

iii. Logic Inc.

11. Logic Inc.⁷ is a domestic corporation organized under the laws of the State of Texas with its principal place of business in Virginia.⁸ Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Logic Inc is a citizen of the States of Texas and Virginia.

iv. Mett Oil Gas

12. Based upon a diligent search of publicly available information, this entity is active under the name ‘METT Oil and Gas, LP,’ which is a Texas limited partnership. A diligent search of publicly available information on the partners of METT Oil and Gas, LP has been conducted, and based upon the publicly available information, the sole general partner is Newman Resources

⁵ The Certificate of Limited Partnership filed by Starck Family Ltd with the Texas Secretary of State on May 19, 1997 lists only Finwing Corporation as the sole general partner.

⁶ The Texas Secretary of State online Business Organization Inquiry – View Entity tool.

⁷ According to the Texas Secretary of State online Business Organization Inquiry – View Entity tool, Logic Inc. is now named CSC Logic, Inc., as of November 9, 2020.

⁸ The Texas Secretary of State online Business Organization Inquiry – View Entity tool.

LLC.⁹ No other partners of METT Oil and Gas LP were discovered through a diligent search and review of publicly available records. Newman Resources LLC is a Texas limited liability company that has its principal place of business in Texas. A diligent search of publicly available information on the members of Newman Resources LLC has been conducted, and based upon the publicly available information, Michael D. Newman is the sole member of Newman Resources LLC.¹⁰ Michael D. Newman is an individual domiciled in Midland County, Texas and is thus a citizen of the State of Texas. No other members of Newman Resources LLC were discovered through a diligent search and review of publicly available records. Thus, Newman Resources LLC is a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, METT Oil and Gas LP is a citizen of the State of Texas.

v. Tiburon Oil Gas

13. Based upon a diligent search of publicly available information, this entity is active under the name ‘Tiburon Oil & Gas, Inc.’, which is a domestic corporation organized under the laws of the State of Texas with its principal place of business in Texas.¹¹ Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Tiburon Oil & Gas, Inc. is a citizen of the State of Texas.

vi. Finwing Corporate Retirement Trust

14. Upon information and belief, the Finwing Corporate Retirement Trust is a land trust for use of mineral rights established for the purpose of transfer of family wealth. For

⁹ The Certificate of Formation of Limited Partnership filed by METT Oil and Gas, LP with the Texas Secretary of State on October 16, 2007 lists only Newman Resources LLC as the general partner.

¹⁰ The Certificate of Formation of Limited Liability Company filed by Newman Resources LLC with the Texas Secretary of State on October 18, 2007 lists only Michael D. Newman as the sole governing member.

¹¹ The Texas Secretary of State online Business Organization Inquiry – View Entity tool.

diversity jurisdiction purposes, a trust takes the citizenship of its trustees.¹² A diligent search of publicly available information of the Finwing Corporate Retirement Trust has been conducted, and based upon the publicly available information, John Starck is the sole trustee of the Finwing Corporate Retirement Trust. No other trustees of Finwing Corporate Retirement Trust were discovered through a diligent search and review of publicly available records. After a diligent search of publicly available information, and upon information and belief, John Starck is an individual domiciled in Coleman County, Texas and is thus a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Finwing Corporate Retirement Trust is a citizen of the State of Texas.

vii. HPL Holdings LLC

15. HPL Holdings, LLC is a Texas limited liability company. A diligent search of publicly available information on the partners of HPL Holdings, LLC has been conducted, and based upon the publicly available information, Justin W. Kuethe and K Weston Reeves are the only members.¹³ No other members of HPL Holdings LLC were discovered through a diligent search and review of publicly available records. Both Justin W. Kuethe and K Weston Reeves are domiciled in Texas and are thus citizens of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, HPL Holdings, LLC is a citizen of the State of Texas.

¹² *Wells Fargo Bank, N.A. as Trustee for Option One Mortgage Loan Trust 2007-fxd2 Asset-Backed Certificate, Series 2007-FXD2 v. Malloy*, No. 3:19-CV-9-S-BN, 2019 WL 4044192, at *8 (N.D. Tex. July 23, 2019); *Justice v. Wells Fargo Bank National Association*, 674 F. App'x 330 (5th Cir. 2016).

¹³ Both the Certificate of Formation of Limited Partnership filed by HPL Holdings LLC with the Texas Secretary of State on September 28, 2010, and the Texas Franchise Tax Public Information Report for the 2018 report year that was filed by HPL Holdings LLC with the Texas Secretary of State list only Justin W. Kuethe and K Weston Reeves as members.

viii. Petraitis Properties, Inc.

16. Petraitis Properties, Inc. is a domestic corporation organized under the laws of the State of Texas with its principal place of business in Texas.¹⁴ Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Petraitis Properties, Inc. is a citizen of the State of Texas.

ix. Vanderpool Management LP

17. Vanderpool Management LP is a Texas limited partnership. A diligent search of publicly available information on the partners of Vanderpool Management LP has been conducted, and based upon the publicly available information, the sole general partner is Utopia Management, Inc.¹⁵ No other members of Vanderpool Management LP were discovered through a diligent search and review of publicly available records. Utopia Management, Inc. is a domestic for-profit corporation organized under the laws of the State of Texas, with its principal place of business in Texas.¹⁶ Thus, Utopia Management, Inc. is a citizen of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Vanderpool Management LP is a citizen of the State of Texas.

x. Kennedy Minerals Ltd

18. Kennedy Minerals Ltd is a Texas limited partnership. A diligent search of publicly available information on the partners of Kennedy Minerals Ltd has been conducted, and based upon the publicly available information, the sole general partner is M&B Family Minerals, LLC.¹⁷ No other members of Kennedy Minerals Ltd were discovered through a diligent search

¹⁴ The Texas Secretary of State online Business Organization Inquiry – View Entity tool.

¹⁵ The Certificate of Formation of Limited Partnership filed by Vanderpool Management LP with the Texas Secretary of State on November 21, 2003, and the Periodic Report filed on February 19, 2009, list Utopia Management, Inc. as the sole general partner of Vanderpool Management LP.

¹⁶ The Texas Secretary of State online Business Organization Inquiry – View Entity tool.

¹⁷ The Certificate of Limited Partnership filed by Kennedy Minerals Ltd with the Texas Secretary of State on January 31, 2005, and the Periodic Report filed on August 3, 2009, list M&B Family Minerals, LLC as the sole general partner of Kennedy Minerals Ltd. The ‘management’ tab on the Texas Secretary of State

and review of publicly available records. M&B Family Minerals LLC is a Texas limited liability company. A diligent search of publicly available information on the partners of M&B Family Minerals LLC has been conducted, and based upon the publicly available information, the following members of M&B Family Minerals LLC were identified: Mary B Kennedy and W Duncan Kennedy¹⁸; W. Duncan Kennedy Heritage Trust; Morgan K. Moody Heritage Trust; Thomas FC Kennedy Heritage Trust; Patrick B Kennedy Heritage Trust; and WD Kennedy Exempt Marital Trust.¹⁹ No other members of M&B Family Minerals LLC were discovered through a diligent search and review of publicly available records. Both Mary B Kennedy and W Duncan Kennedy are domiciled in Texas and are thus citizens of the State of Texas.

19. Upon information and belief, each of the above trusts are land trusts for use of mineral rights established for the purpose of transfer of family wealth. A diligent search of publicly available information of the W. Duncan Kennedy Heritage Trust has been conducted, and based upon the publicly available information, W. Duncan Kennedy is the sole trustee of the W. Duncan Kennedy Heritage Trust. No other trustees of W. Duncan Kennedy Heritage Trust were discovered through a diligent search and review of publicly available records. After a diligent search of publicly available information, and upon information and belief, W. Duncan Kennedy is an individual domiciled in Midland County, Texas and is thus a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, W. Duncan Kennedy Heritage Trust is a citizen of the State of Texas.

online Business Organization Inquiry – View Entity tool also lists M&B Family Minerals LLC as the general partner of Kennedy Minerals Ltd.

¹⁸ The ‘management’ tab on the Texas Secretary of State online Business Organization Inquiry – View Entity tool lists Mary B Kennedy and W Duncan Kennedy as members of M & B Family Minerals LLC.

¹⁹ Texas Franchise Tax Public Information Report for the 2019 report year that was filed by M & B Family Minerals LLC with the Texas Secretary of State lists W. Duncan Kennedy Heritage Trust, Morgan K. Moody Heritage Trust, Thomas FC Kennedy Heritage Trust, Patrick B Kennedy Heritage Trust, and WD Kennedy Exempt Marital Trust, as members.

20. A diligent search of publicly available information of the Morgan K. Moody Heritage Trust has been conducted, and based upon the publicly available information, Morgan Kennedy Moody is the sole trustee of the Morgan K. Moody Heritage Trust. No other trustees of Morgan K. Moody Heritage Trust were discovered through a diligent search and review of publicly available records. After a diligent search of publicly available information, and upon information and belief, Morgan Kennedy Moody is an individual domiciled in Harris County, Texas and is thus a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Morgan K. Moody Heritage Trust is a citizen of the State of Texas.

21. A diligent search of publicly available information of the Thomas FC Kennedy Heritage Trust has been conducted, and based upon the publicly available information, Thomas F.C. Kennedy is the sole trustee of the Thomas FC Kennedy Heritage Trust. No other trustees of Thomas FC Kennedy Heritage Trust were discovered through a diligent search and review of publicly available records. After a diligent search of publicly available information, and upon information and belief, Thomas F.C. Kennedy is an individual domiciled in Travis County, Texas and is thus a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Thomas FC Kennedy Heritage Trust is a citizen of the State of Texas.

22. A diligent search of publicly available information of the Patrick B Kennedy Heritage Trust has been conducted, and based upon the publicly available information, Patrick B. Kennedy is the sole trustee of the Patrick B Kennedy Heritage Trust. No other trustees of Patrick B. Kennedy Heritage Trust were discovered through a diligent search and review of publicly available records. After a diligent search of publicly available information, and upon information and belief, Patrick B. Kennedy is an individual domiciled in Davidson County, Tennessee and is

thus a citizen of the State of Tennessee. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Patrick B Kennedy Heritage Trust is a citizen of the State of Tennessee.

23. A diligent search of publicly available information of the WD Kennedy Exempt Marital Trust has been conducted, and based upon the publicly available information, Wesley Dale Kennedy is the sole trustee of the WD Kennedy Exempt Marital Trust. No other trustees of WD Kennedy Exempt Marital Trust were discovered through a diligent search and review of publicly available records. After a diligent search of publicly available information, and upon information and belief, Wesley Dale Kennedy is an individual domiciled in Midland County, Texas and is thus a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, WD Kennedy Exempt Marital Trust is a citizen of the State of Texas.

24. Accordingly, pursuant to § 1332(c)(1), therefore, M&B Family Minerals LLC is a citizen of the States of Texas and Tennessee, and thus, Kennedy Minerals Ltd is a citizen of the States of Texas and Tennessee.

xi. Voyage Energy LLC

25. Voyage Energy LLC was a Texas limited liability company that converted to a limited partnership, Voyage Energy, LP, by way of the Certificate of Conversion of a Limited Liability Company Converting to a Limited Partnership filed by Voyage with the Texas Secretary of State on December 21, 2017. A diligent search of publicly available information on the partners of Voyage Energy, LP, has been conducted, and based upon the publicly available information, the sole general partner is CCLAW Investments LLC.²⁰ No other members of

²⁰ The Certificate of Conversion of a Limited Liability Company Converting to a Limited Partnership filed by Voyage with the Texas Secretary of State on December 21, 2017 lists CCLAW Investments LLC as the sole general partner of Voyage Energy LP. The 'management' tab on the Texas Secretary of State online Business Organization Inquiry – View Entity tool also lists CCLAW Investments LLC as the general partner of Voyage Energy LP.

Voyage Energy LP were discovered through a diligent search and review of publicly available records. CCLAW Investments LLC is a Texas limited liability company. A diligent search of publicly available information on the partners of CCLAW Investments LLC has been conducted, and based upon the publicly available information, the sole managing member was identified as Charles W. Perry III.²¹ No other members of CCLAW Investments LLC were discovered through a diligent search and review of publicly available records. Charles W. Perry III is an individual domiciled in Texas and is thus a citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, CCLAW Investments LLC is a citizen of the State of Texas, and Voyage Energy LP is a citizen of the State of Texas.

26. No other members of Plaintiff were discovered through a diligent search and review of publicly available records and Depositors has no reason to believe that any members share the citizenship of Depositors. Based on information and belief after diligent inquiry, and pursuant to 28 U.S.C. § 1332(a), Plaintiff is a citizen of the States of Texas, Virginia and Tennessee.

27. Depositors Insurance Company is organized under the laws of Iowa and maintains its principal place of business in Iowa. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Depositors is a citizen of the State of Iowa.

28. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

²¹ The Certificate of Formation filed by CCLAW Investments LLC with the Texas Secretary of State on December 22, 2017 lists Charles W. Perry III as the sole managing member. The ‘management’ tab on the Texas Secretary of State online Business Organization Inquiry – View Entity tool also lists Charles W. Perry III CCLAW Investments LLC as the managing member of CCLAW Investments LLC.

B. Amount in Controversy

29. Generally, “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy.”²² Removal is proper if it is “facially apparent” from the complaint that the claims asserted exceed the jurisdictional amount.²³ In addition, penalties, exemplary damages, and attorneys’ fees are included as part of the amount in controversy.²⁴

30. Here, Plaintiff seeks “monetary relief over \$1,000,000.”²⁵ Plaintiff further seeks compensation for (1) actual damages, (2) consequential damages, (3) treble damages, (4) exemplary damages; (5) attorney’s fees; and (6) pre- and post-judgment interest.²⁶ Plaintiff has alleged that Defendant’s conduct was wrongful and done knowingly, entitling him to a trebling of actual damages under Texas Insurance Code Chapter 541.²⁷ Therefore, it is facially apparent from Plaintiff’s live petition that the amount in controversy in this case exceeds \$75,000. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

III. CONCLUSION

31. Removal of this action under 28 U.S.C. § 1441 is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

²² 28 U.S.C. § 1446(c)(2); *see also* *Santiago v. State Farm Lloyds*, No. 7:13-CV-83, 2013 WL 1880845, at *1 (S.D. Tex. May 3, 2013).

²³ *Puckitt v. Wells Fargo Bank, N.A.*, No. G-09-0056, 2010 WL 2635626, at *3 (S.D. Tex. June 28, 2010) (citing *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)).

²⁴ *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

²⁵ Exhibit A, at ¶ 2.1

²⁶ *Id.* at ¶¶ 7.23-10.2, 14.1(a)-(k).

²⁷ *Id.* at ¶¶ 7.19, 14.1(c)-(e); Tex. Ins. Code sections 541.002 & 541.152.

32. WHEREFORE, Defendant Depositors Insurance Company hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

Patrick M. Kemp

Texas Bar No. 24043751

pkemp@smsm.com

Robert G. Wall

Texas Bar No. 24072411

rwall@smsm.com

Sarah C. Plaisance

Texas Bar No. 24102361

splaisance@smsm.com

Segal McCambridge Singer & Mahoney

100 Congress Avenue, Suite 800

Austin, Texas 78701

(512) 476-7834

(512) 476-7832 – Facsimile

**ATTORNEYS FOR DEFENDANT
DEPOSITORS INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served electronically via CM/ECF and certified mail this the 23rd day of March, 2021 to:

Randal L. Dean

Kyle Voss

Brown Pruitt Wambganns Dean Forman & Moore, P.C.

801 Wells Fargo Tower

201 Main Street

Fort Worth, Texas

rdean@brownpruitt.com

kvoss@brownpruitt.com

#9414 7266 9904 2178 2231 56

/s/ Patrick M. Kemp

Patrick M. Kemp